

Hon. C. Steven McMurry, Chair  
Committee on Improving Small Claims Case Processing  
1501 W. Washington St., Ste. 410  
Phoenix, AZ 85007

IN THE SUPREME COURT

STATE OF ARIZONA

PETITION TO ADOPT ARIZONA	)	
RULES OF SMALL CLAIMS	)	
PROCEDURE AND MODIFY	)	Supreme Court No. R-18-0021
RULE 101(b) OF THE JUSTICE	)	
COURT RULES OF CIVIL	)	<b>Second Amended Petition</b>
PROCEDURE	)	
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Pursuant to this Court’s July 12, 2018 Order, the Committee on Improving Small Claims Case Processing (“the Committee”) hereby submits its second amended petition and respectfully petitions this Court to adopt Arizona Rules of Small Claims Procedure and amend Rule 101(b) of the Justice Court Rules of Civil Procedure. The text of these rules is set out in Appendices C and D. It is important to note that the purpose of this amended petition is to provide the Court with data from a pilot program to illustrate how the proposed Arizona Rules of Small Claims Procedure will improve small claims case processing and benefit the citizens of Arizona. The results of the pilot program are set out in Appendices A and B.

**I. Background.** Administrative Order 2016-115 established the Committee on Improving Small Claims Case Processing in furtherance of the goals of the Arizona Supreme Court's *Advancing Justice Together: Courts and Communities* strategic agenda. Specifically, the Committee was established to recommend solutions to the case processing delays prevalent in small claims cases in Arizona, which was initially recognized by the Steering Committee on Arizona Case Processing Standards. Although the small claims case processing standard currently adopted requires courts to dispose of 75% of cases within 100 days, 90% of cases within 150 days, and 98% of cases within 180 days, nearly every justice court in Arizona falls well below this standard. In fact, an analysis of data from justice courts across the State revealed small claims cases as old as 4,059 days.

The Committee presented its report and recommendations to the Arizona Judicial Council ("AJC") on December 14, 2017. The AJC approved the Committee's request to file this rule petition seeking the adoption of Arizona Rules of Small Claims Procedure, subject to amendment based on pilot program data, public comment and feedback, and Committee input. The report to the AJC is an integral part of this petition. Petitioner is providing the weblink to the report for

additional background information and further details on the justice court data analysis referenced above.<sup>1</sup>

It is important to acknowledge that very limited guidance and authority for small claims case processing currently exist in the Arizona Rules of Court and in the Arizona Revised Statutes (“ARS”). Specifically, the Arizona Rules of Court make only two provisions in the Justice Court Rules of Civil Procedure applicable to small claims cases, namely Rule 113(i) concerning dismissal due to lack of service and Rule 140 concerning the entry of default judgments.

## **II. Content of the Proposed Arizona Rules of Small Claims Procedure.**

The proposed Arizona Rules of Small Claims Procedure make the small claims process more comprehensible and accessible to self-represented litigants. This group of litigants is distinguishable from the majority of participants in federal or superior courts who are typically represented by attorneys, because attorneys cannot appear in small claims cases unless the parties agree to it, which is rare. This justice court demographic requires that the proposed Arizona Rules of Small Claims Procedure use more simplified language, less “legal jargon,” and an increased number of definitions for legal terms. The proposed Arizona Rules of

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<sup>1</sup> The report to the Arizona Judicial Council can be found at the following link: [http://www.azcourts.gov/Portals/84/MeetingMaterials/2017/Dec/TAB\\_2\\_AJCSmallClaims.pdf](http://www.azcourts.gov/Portals/84/MeetingMaterials/2017/Dec/TAB_2_AJCSmallClaims.pdf)

Small Claims Procedure also use shorter sentences, and limit cross-references to other rules of court and the Arizona Revised Statutes concerning the topic at hand.

The length of the rules and simplification of text contributes to the overall simplification of procedures. The procedural revisions made by the Committee include significantly enhanced procedural protections as well. Noteworthy procedural enhancements in the proposed Arizona Rules of Small Claims Procedure include the following:

a. Notice to the Plaintiff and Defendant: The proposed Arizona Rules of Small Claims Procedure require an attachment to the summons of a one-page “*Notice to the Plaintiff and Defendant*.” This notice provides information on small claims lawsuits and summarizes the parties’ rights and responsibilities. The plaintiff must provide proof to the court that the notice was served on the defendant. This notice parallels the requirement of a “*Residential Eviction Information Sheet*” in eviction actions and the “*Notice to the Defendant*” in justice court civil cases.

b. Elimination of Requirement for a Written Answer: The proposed Arizona Rules of Small Claims Procedure eliminate the requirement for the defendant to file a written answer and make this filing optional unless the defendant files a counterclaim or is otherwise ordered by the court to file a written answer. Committee members agreed that many times a written answer is perfunctory in that

it does not offer sufficient information or adequate notice to the plaintiff of any defenses that the defendant may raise at trial, rendering a written answer useless to the plaintiff. Additionally, almost half of the states have abolished the requirement for a written answer from the defendant in small claims cases.

Lastly, requiring a written answer from a self-represented litigant may preclude or intimidate some defendants from appearing at a hearing who would otherwise appear if there were not a requirement to file a written answer. However, some comments and feedback received by the Committee raised the concern that the lack of a written answer may impede the plaintiff's fundamental due process rights at trial since the plaintiff will not have an opportunity to prepare for the defendant's defenses if no written answer is filed before trial. This could result in a potential "ambush" of the plaintiff.

The Committee clarified that its intent in removing the requirement to file a written answer revolves around the issue of access to justice and allowing defendants to appear who may otherwise not file a written answer. Additionally, the Committee responded to these concerns by adding language in the proposed Arizona Rules of Small Claims Procedure that allows the court to order the defendant to file a written answer and continue the hearing if the court opines that either party's rights would be harmed by proceeding without the filing of a written answer.

c. Default Judgments: Rule 140, Justice Court Rules of Civil Procedure (“JCRCPP”), made applicable to small claims cases through Rule 101(b), JCRCPP, allows the plaintiff to file an application for entry of default if a written response has not been filed within 20 days of service. The plaintiff must then file a motion for judgment if the defendant does not respond to the application for entry of default.

This process has proven to be confusing to self-represented litigants and has hindered many litigants’ ability to prosecute their cases because the manner in which to proceed after service is foreign to them. Since a written answer is not required under the proposed Arizona Rules of Small Claims Procedure, a plaintiff will no longer be required to file for entry of default. Specifically, the plaintiff will be required to attend the hearing scheduled at the time the complaint is filed, and if the defendant fails to appear, the court may enter a default judgment at that time. Eliminating the extra steps in this process allows for less paperwork and more meaningful contact with the plaintiff so that the court can render a better-informed decision.

d. Setting the Hearing: Procedures in the Arizona Revised Statutes regarding setting hearings in small claims cases are applied inconsistently and often not followed in justice courts throughout the State. Specifically, although ARS § 22-515 requires that a hearing be set “[o]n the filing of an answer by the defendant”

and “shall be set for a date within sixty days of the filing of the defendant’s answer,” some courts set the hearing outside this time window; some courts do not set a hearing at all, allowing the case to linger if the parties do not follow up with the court. In the report provided to the AJC, the data reflected that 10% of the cases that had a written answer filed had either a hearing set *after* the statutorily required 60-day timeframe, or had no hearing set at all.

The Committee has had extensive discussions regarding how this issue should be addressed to ensure that cases are heard in a timely manner. Committee members agreed that apart from civil cases, the small claims case type is the only justice court case type that does not have a hearing date set at the time the complaint is filed. Specifically, all civil traffic, criminal traffic, criminal, and eviction actions filed into Justice of the Peace courts have return dates that are given to all parties at each appearance, including filing, until the case is disposed. The hearing provisions of the proposed Arizona Rules of Small Claims Procedure address this issue and require the court to set a hearing at the time the complaint is filed. The hearing must take place within 60 to 75 days of the complaint filing date.<sup>2</sup>

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<sup>2</sup> The proposed Arizona Rules of Small Claims Procedure make provisions for setting an Alternative Dispute Resolution Conference within this timeframe in lieu of a hearing for counties that have this type of program.

Caseflow practices recognize that the scheduling of events allow for continuous of control of cases. Research has also shown that where the court actively controls case progress, times to disposition are shortened without sacrificing quality. National Center for State Courts: *Caseflow & Workflow Management*.

The Committee was mindful of small claims caseload differences in justice courts throughout the State. The proposed Arizona Rules of Small Claims Procedure provide a process that allows for timely disposal of small claims matters in all courts. Accordingly, the procedures outlined in the proposed Arizona Rules of Small Claims Procedure leave room for larger courts to implement differentiated case management tracks for heavier and more unique caseloads, if they choose, so that these rules can be implemented without concerns related to calendar overload.

A comment filed by the Honorable Adam Watters, Presiding Judge of the Pima County Consolidated Justice Court (“PCCJC”), indicates that the proposed Arizona Rules of Small Claims Procedure will complicate the resolution of small claims cases for PCCJC due to the court’s high volume of small claims case filings. Specifically, because of the court’s unique structure wherein eight justice court precincts are consolidated into one court, the volume of small claims cases filed into PCCJC is higher than any other court in Arizona. Although PCCJC is staffed with eight justices of the peace, the court receives approximately 3,500



small claims filings per year. All other justice courts in Arizona receive less than 1,000 small claims case filings per year. While all other justice courts in Arizona are staffed with only one justice of the peace, it is important to note that in many courts, including PCCJC, hearing officers assist in handling small claims matters.

Judge Watters indicates that while the proposed Arizona Rules of Small Claims Procedure may be deemed advantageous for smaller courts, they will create inefficiencies and waste resources for PCCJC. In response, the Committee voted to unanimously support an exception of application of the proposed Arizona Rules of Small Claims Procedure for PCCJC. It should be noted that this exception was supported by the Committee before data from the pilot program was reviewed and before adding a provision in the proposed Arizona Rules of Small Claims Procedure allowing courts to dismiss cases at 60 days for lack of service; however, the Committee did not seek to amend this exception after the pilot program data was reviewed and the 60-day dismissal provision was added.

e. Time for Service: Rule 113(i), JCRCP, made applicable to small claims cases through Rule 101(b), JCRCP, provides the plaintiff 120 days to serve the defendant with the summons and complaint.

In order to hold a hearing within 60 to 75 days of the complaint filing date and allow adequate time for other filings, the Committee recognized that the time to file proof of service must be reduced. Accordingly, the proposed Arizona Rules

of Small Claims Procedure require the plaintiff to file proof of service of the “*Notice to the Plaintiff and Defendant*”, summons, and complaint within 30 days of the complaint filing date. Although the Committee has received comments and feedback from stakeholders indicating that 30 days to file proof of service is not an adequate amount of time to execute this task, data from the pilot program indicates the contrary. Specifically, the average time to file/execute service is less than 32 days, as illustrated in Chart B located in Appendix B.<sup>3</sup>

Moreover, throughout its meetings, the Committee has emphasized the need to uphold the intent of small claims court in that small claims are intended to be “inexpensive, speedy, and informal.” ARS § 22-501. Extending the time for service beyond 30 days contradicts the statutory intent of the small claims process, and is at odds with the small claims pilot program data, which reflects the actual time necessary for service of process in these cases. Based on the pilot program data and the nature of small claims cases, the Committee does not support the notion of extending the time for filing proof of service beyond 30 days.

However, the Committee recognizes that filing proof of service within 30 days may not be possible in 100% of small claims cases. Accordingly, the proposed Arizona Rules of Small Claims Procedure contain a provision that allows

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<sup>3</sup> Although the Maricopa-Stanfield Justice Court has an average of 32 days, this is the average time to file proof of service with the court, indicating that the time to actually execute service is less than 32 days.

plaintiffs to request an extension of time to file proof of service. This allows the court more timely and meaningful contact with the parties to better manage small claims cases.

Additionally, the court will be able to dismiss the case for lack of proof of service sooner than is currently permitted. Specifically, Rule 113(i), JCRCP, requires the court to wait 120 days before dismissing the case for lack of service. Under the proposed Arizona Rules of Small Claims Procedure, if proof of service has not been received within 60 days of the complaint filing date, and the plaintiff has failed to appear to request an extension, the court may dismiss the case.

### **III. Small Claims Pilot Project and Results**

On January 10, 2018, this Court issued Administrative Order 2018-01 authorizing a pilot program of the proposed Arizona Rules of Small Claims Procedure filed with the initial *Petition to Adopt Arizona Rules of Small Claims Procedure and Modify Rule 101(b) of the Justice Court Rules of Civil Procedure* (“pilot rules”). The pilot courts and annual small claims case filings are detailed in Chart A of Appendix B.

The start date of the pilot program in the courts varied, ranging from January 15, 2018 in the Maricopa-Stanfield Justice Court, to February 21, 2018 in the Casa Grande Justice Court, to April 16, 2018 in the Hassayampa and Manistee Justice

Courts. Pilot program data for all four courts was analyzed on September 4, 2018, providing five to eight months of data.

Overall, the pilot program was a success. A total of 244 cases were disposed in the pilot program as of September 4, 2018. All four participating courts were able to dispose of 100% of small claims cases in under 113 days from the date of filing. The average time to disposition in each court is detailed in Chart C located in Appendix B and ranges from 54 to 67 days.

Appendix A contains bar graphs for the overall pilot program results, as well as for each individual pilot court, illustrating the extent to which each court was able to improve its small claims case processing. It should be noted that while the Hassayampa and Manistee Justice Courts were able to achieve an average time to disposition of less than 60 days, each court reported that processing small claims cases in the manner set forth in the pilot rules is not sustainable long-term due to the large resource draw required for the courts' larger small claims caseloads. Specifically, setting the hearing at the time of filing will require an increase in the number of hearing officers needed to hear these cases.

In an effort to alleviate calendaring concerns and decrease the resources required for the initial hearing, the Committee responded to these concerns by making a change to the proposed Arizona Rules of Small Claims Procedure regarding the timeframe for filing proof of service. Specifically, under the pilot

rules, although service was required to be *executed* within 20 days of the complaint filing date, proof of service was not required to be *filed* in advance. As such, in many cases, the courts did not know whether service had been executed until the date of the hearing. This drew a large amount of resources that could have been reallocated if the court knew whether service had been executed prior to the hearing date. Accordingly, the Committee revised the rules regarding service to require that proof of service be *filed* within 30 days instead of requiring that it only be *executed* within 20 days. This allows the courts to screen their cases so that execution of service can be confirmed prior to the hearing date.

Additionally, the Committee added a rule that allows the court to dismiss any case for lack of service if proof of service has not been received within 60 days of the complaint filing date, unless the plaintiff has been granted an extension of time to file proof of service. Although the 60-day dismissal rule cannot be utilized in cases with hearings set exactly 60 days from the complaint filing date, courts with heavier calendars can opt to set the hearing date closer to the 75-day mark instead of the 60-day mark. This provides an opportunity for court case review before the hearing date. Analysis of the pilot data indicates that although the larger volume courts will be required to set all hearings at the time of filing, 40% of those hearings will be vacated before the hearing date due to lack of service or voluntary dismissal. Smaller volume courts that are not concerned with reviewing and

dismissing cases for lack of proof of service within 60 days of service can set the hearing dates closer to the 60-day mark and handle the cases as they deem appropriate on the hearing date.

Lastly, the Committee extended the time in which the courts are required to set the initial hearing, extending the timeframe from 45-60 days to 60-75 days in an effort to create a larger time window for courts with larger small claims caseloads.

#### **IV. Changes to Rule 101(b), Rules of Justice Court Procedure.**

The adoption of the proposed Arizona Rules of Small Claims Procedure will require a change to Rule 101(b), JCRCP, to avoid conflicting rules of procedure. Specifically, Rules 113(i) and 140, JCRCP, respectively, address dismissal of lawsuits for lack of service and entry of default judgments. Rules 8 and 19, Arizona Rules of Small Claims Procedure, contains provisions for case dismissal that are at odds with Rule 113(i). Additionally, since Rule 10, Arizona Rules of Small Claims Procedure, eliminates the requirement for the defendant to file a written answer in a small claims case unless a counterclaim is filed or the defendant is otherwise ordered by the court, the default process in Rule 140, JCRCP, is no longer applicable to small claims cases, except as to PCCJC. The proposed amendments to Rule 101(b) are set forth in Appendix C, with verbiage additions underlined and verbiage removals stricken.

**V. Comments.** The proposed Arizona Rules of Small Claims Procedure have been open for public comment on two different occasions. The first comment period was open for 65 days (January 10 to March 16, 2018), and the second comment period was open for 133 days (April 27 to September 7, 2018). The Committee has reviewed all comments and has made revisions to the proposed Arizona Rules of Small Claims Procedure where it deemed revisions were appropriate.

**VI. Conclusion.** Based on the data and information provided in this petition, Petitioner believes that the need for the adoption of Arizona Rules of Small Claims Procedure is substantial. Small claims case processing has declined in recent years and will continue to decline unless case processing requirements in Arizona change, which is what the proposed Arizona Rules of Small Claims Procedure aim to do. The Committee has been met with gratitude, as well as opposition, in response to these rules, and has discussed alternative avenues for processing small claims cases. Despite the exploration of alternatives, the proposed Arizona Rules of Small Claims Procedure establish the only case processing procedures that will effectively and adequately address the small claims case processing problems Arizona is facing on a statewide level.

The Committee strongly believes that the pilot program data supports the notion that the proposed Arizona Rules of Small Claims Procedure will

substantially improve the small claims system for the citizens of Arizona, as well as for Arizona's Justice of the Peace Courts. Accordingly, Petitioner respectfully requests that this Court adopt the proposed Arizona Rules of Small Claims Procedure and proposed amendments to the Justice Court Rules of Civil Procedure.

RESPECTFULLY SUBMITTED this 19<sup>th</sup> day of September, 2018

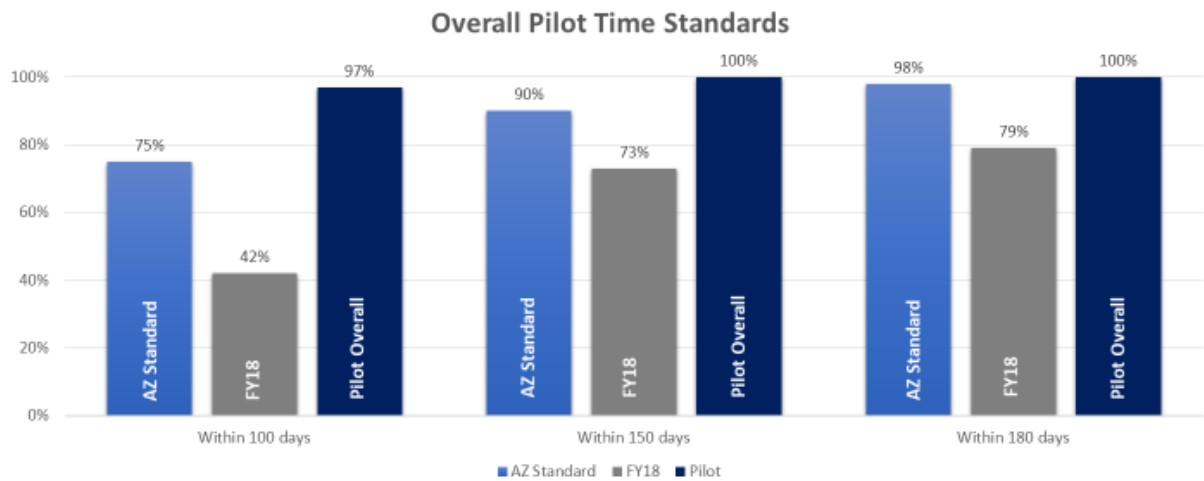
By /s/ C. Steven McMurry  
Hon. C. Steven McMurry, Chair  
Committee on Improving Small Claims Case  
Processing  
1501 W. Washington Street, Ste. 410  
Phoenix, AZ 85007  
602-452-3966  
mmathes@courts.az.gov



## Appendix A

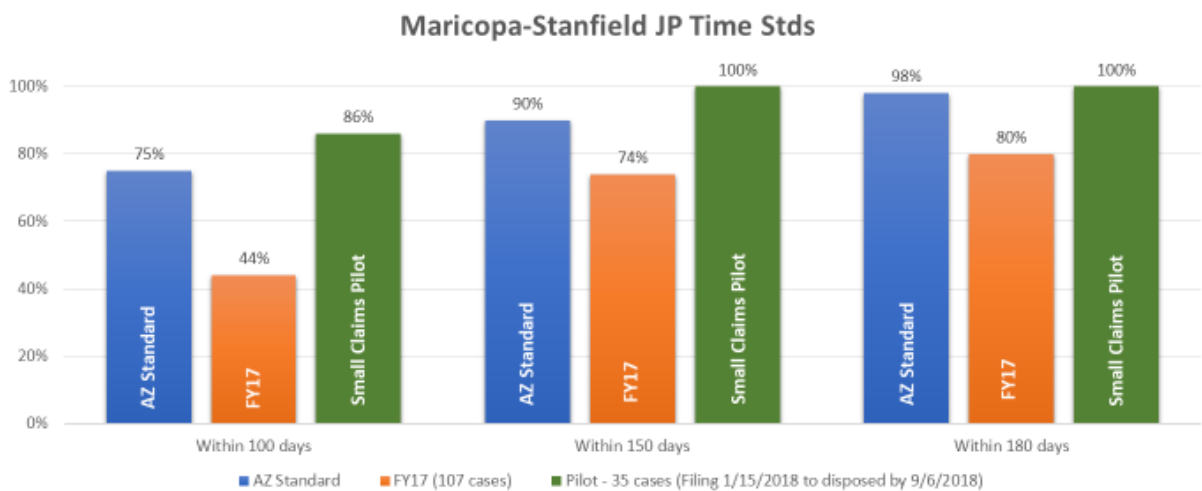
### Pilot Results Overall

75% within 100 days - 90% within 150 days - 98% within 180 days



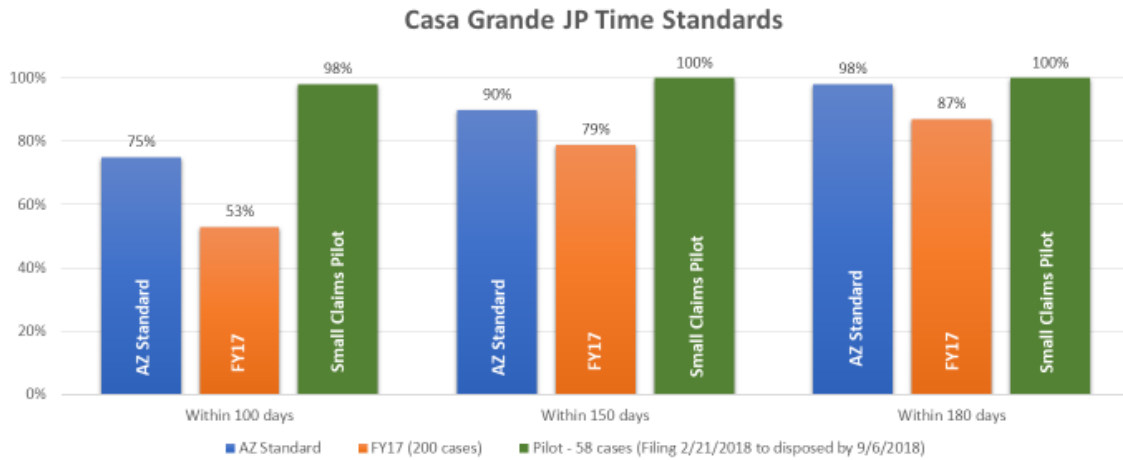
### Maricopa-Stanfield Justice Court

75% within 100 days - 90% within 150 days - 98% within 180 days



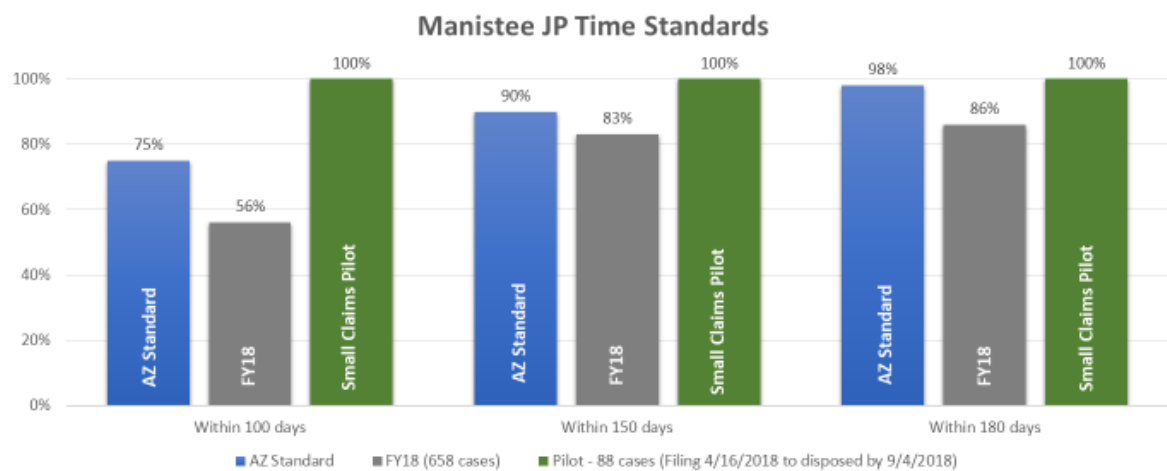
# Casa Grande Justice Court

75% within 100 days - 90% within 150 days - 98% within 180 days



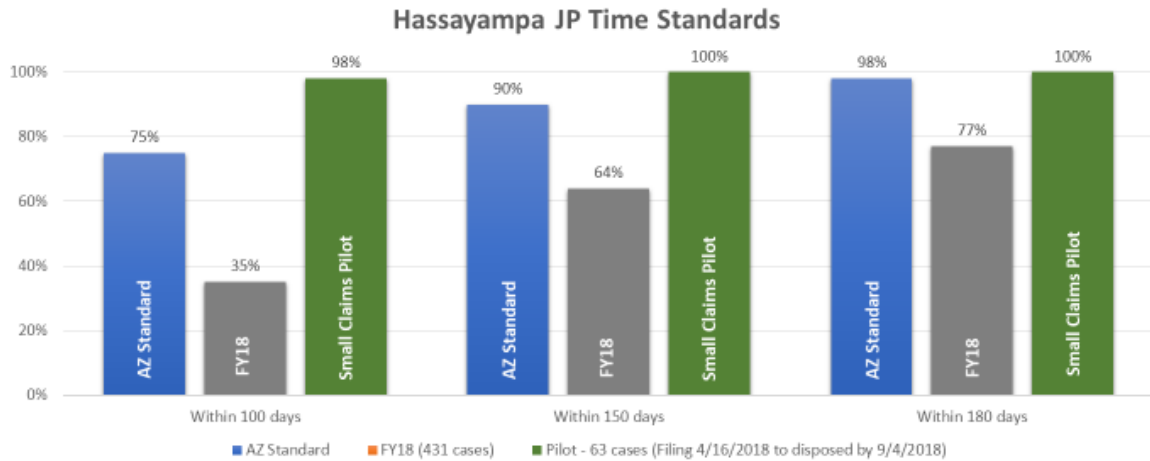
# Manistee Justice Court

75% within 100 days - 90% within 150 days - 98% within 180 days

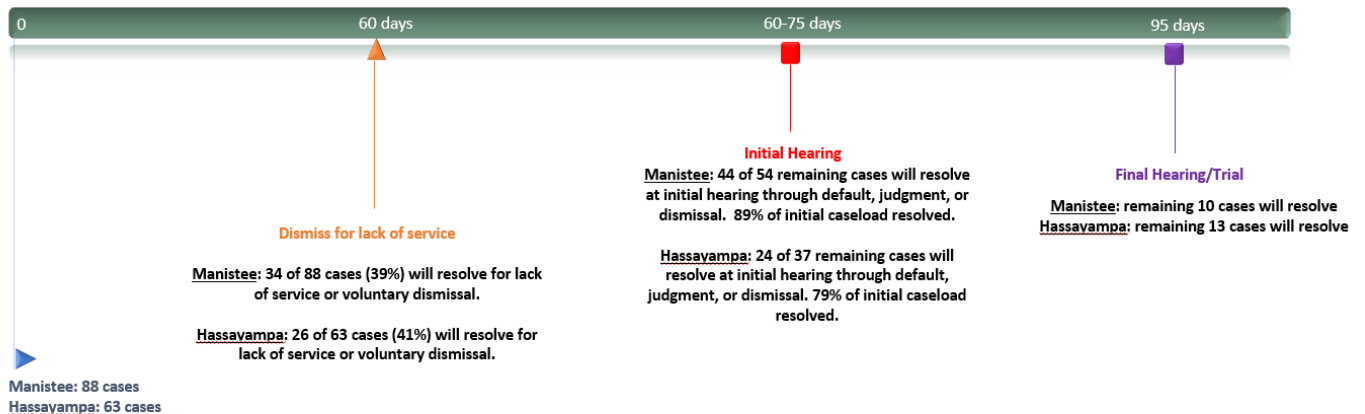


# Hassayampa Justice Court

75% within 100 days - 90% within 150 days - 98% within 180 days



## Timeline Changes Based on Pilot Program Data



## **Appendix B**

**Chart A**

<b>Court</b>	<b>County</b>	<b>Annual Small Claims Filings (FY17)</b>
Maricopa-Stanfield Justice Court	Pinal	138
Casa Grande Justice Court	Pinal	250
Hassayampa Justice Court	Maricopa	424
Manistee Justice Court	Maricopa	684

**Chart B**

<b>Court</b>	<b>Average Time</b>	<b>Comments</b>
Maricopa-Stanfield Justice Court	32 days	Average days to file proof of service
Casa Grande Justice Court	20 days	Average days to file proof of service
Hassayampa Justice Court	10 days	Average days to execute service
Manistee Justice Court	12 days	Average days to execute service

**Chart C**

<b>Court</b>	<b>Average Time to Disposition</b>
Maricopa-Stanfield Justice Court	67 days
Casa Grande Justice Court	56 days
Hassayampa Justice Court	54 days
Manistee Justice Court	55 days

## Appendix C

### **Rule 101. Application and Interpretation**

**b. Application of these rules.** These rules apply to civil lawsuits in justice courts in Arizona. These rules do not apply to evictions, small claims, civil traffic or civil boating proceedings, or to protective orders or injunctions against harassment in justice courts, except that Rule 113(i) concerning dismissal because of lack of service and Rule 140 regarding entry of default judgments apply applies in small claims cases if the court is exempt from applying the Arizona Rules of Small Claims Procedure under Rule 21 of those rules. **[ARCP 1]**

## **Appendix D**

The entirety of the proposed rules is new text.

**Arizona Rules of Small Claims Procedure**  
**Table of Contents**

- Rule 1: Small Claims Lawsuit.
- Rule 2: Parties to a Lawsuit.
- Rule 3: Phone Numbers and Email Addresses.
- Rule 4: Computing Time.
- Rule 5: Where to File a Small Claims Lawsuit.
- Rule 6: Plaintiff Must File a Complaint.
- Rule 7: Setting the Hearing.
- Rule 8: Service.
- Rule 9: Providing Subsequent Documents to the Other Party.
- Rule 10: Answer.
- Rule 11: Counterclaim.
- Rule 12: Defendant Can File Motion to Change Venue.
- Rule 13: Either Party Can Transfer the Lawsuit to the Civil Division.
- Rule 14: Alternative Dispute Resolution Conference.
- Rule 15: The Hearing.
- Rule 16: Requesting an Interpreter or Special Accommodations.
- Rule 17: Judgment.
- Rule 18: Vacating a Judgment.
- Rule 19: Dismissing a Lawsuit.
- Rule 20: Enforcing a Judgment.
- Rule 21: Exception for Consolidated Justice Courts
- Rule 22: Forms.

## **Rule 1. Small Claims Lawsuit**

- (a) **Definition of a “Small Claims Lawsuit.”** A “small claims lawsuit” is an elective, simplified procedure for a lawsuit in which the debt, damage, tort, injury, or value of the personal property claims by either the plaintiff or defendant is not more than \$3,500, exclusive of interest and costs. A small claims lawsuit also includes lawsuits where a party asks the court to disaffirm, avoid, or rescind a contract, or seeks equitable relief, and the amount at issue is not more than \$3,500.
- (b) **Purpose of the “Small Claims Division.”** The purpose of the justice court’s “small claims division” is to provide a process for the inexpensive, speedy, and informal resolution of small claims lawsuits. Courts and parties should interpret these rules liberally and consistently with this purpose.
- (c) **Representation.** A.R.S. § 22-512 governs who may represent a party in a small claims lawsuit. Attorneys may not represent a party in a small claims lawsuit unless all the parties agree to it in writing. A corporation, partnership, association, or any other business or organization must file a notice stating the name of an authorized person who will file and appear in court on its behalf.
- (d) **No Jury and No Appeal.** A party does not have a right to a jury trial or to appeal the judgment in a small claims lawsuit. The decision of the justice of the peace or hearing officer is final and binding on both parties.
- (e) **Rules and Statutes.** These rules and the Arizona Revised Statutes (“A.R.S.”) Title 22, Chapter 5, govern procedures for small claims lawsuits.

## **Rule 2. Parties to a Lawsuit**

- (a) **Parties.** The parties to a small claims lawsuit are the plaintiff and the defendant. A party can be an individual, a marital community, a corporation, a partnership, an association, or other organization.
- (b) **Plaintiff.** A plaintiff is the party who files a small claims lawsuit. The plaintiff must be a real party to the original transaction that forms the basis of the lawsuit, unless the person is commencing a lawsuit as a personal representative duly appointed pursuant to a proceeding as provided in Title 14 of the Arizona Revised Statutes.
- (c) **Defendant.** A defendant is the party who is sued.



- (d) Use of Correct Legal Name.** A plaintiff must use the party's correct legal name when filing a lawsuit. Each defendant must be sued by the correct legal name.

### **Rule 3. Phone Numbers and Email Addresses**

All parties must provide the court with a physical address, email address, and phone number, if available. The court may use this information to communicate with the parties about their case by mail, email, text message, or phone.

### **Rule 4. Computing Time**

These rules may require a party to take action within a specified number of days from an event. The day of the event is not counted. A party must include Saturdays, Sundays, and holidays when counting days, but if the last day to take action falls on a Saturday, Sunday, or holiday, the party has until the next business day to take that action. Unless otherwise specified, all time periods referenced in these rules are calendar days.

### **Rule 5. Where to File a Small Claims Lawsuit**

The plaintiff must file a complaint in the justice court precinct (the "venue") where the defendant resides or as permitted by A.R.S. § 22-202. The claim may be heard in a different justice court precinct if the court has jurisdiction and the defendant fails to object.

### **Rule 6. Plaintiff Must File a Complaint**

**(a) The Complaint.** A small claims lawsuit starts when a plaintiff files a small claims complaint.

- (1) *Statement of Claim.*** The complaint must be legible and must briefly state the plaintiff's reasons for the claim against the defendant.
- (2) *Active Military Service.*** The complaint must include a statement indicating whether any defendant listed in the complaint is in active military service.
- (3) *Amount of Claim.*** The amount of all claims in the complaint cannot exceed the jurisdictional limit for a small claims lawsuit.
- (4) *Filing Fee.*** The plaintiff must pay a fee to the court to file a complaint, although the plaintiff may request a deferral or waiver of

this fee as provided by A.R.S. § 12-302 and the Arizona Code of Judicial Administration § 5-206.

- (b) Claim for More Than \$3,500.** If the claim amount or amount at issue in the plaintiff's complaint exceeds the small claims jurisdictional limit, the plaintiff cannot file the lawsuit in the small claims division. A plaintiff cannot avoid this requirement by splitting the claim amount into several smaller claim amounts.
- (c) Amendments.** No amended complaints will be allowed. A plaintiff can choose to dismiss the complaint and file a new lawsuit.
- (d) Settlement.** The plaintiff must notify the court if the lawsuit settles before the hearing date by filing a Notice of Settlement.

### **Rule 7. Setting the Hearing**

- (a) Summons; Hearing Date.** Except as provided in Rule 14 of these rules, the court will set a hearing date when the plaintiff files a complaint. The court will write the hearing date on the summons and return the summons to the plaintiff. The court will provide one summons for each defendant named in the complaint. The hearing must be held between 60 and 75 days after the complaint filing date. All parties must appear at the scheduled hearing.

### **Rule 8. Service**

- (a) Serving the Defendant: When.** Proof of service of the summons, complaint, and Notice to the Plaintiff and Defendant ("notice") must be filed within 30 days of the complaint filing date.
- (b) Serving the Defendant: How.** The plaintiff must serve the summons, complaint, and notice on each defendant in a manner provided by this rule.
  - (1) *Registered or Certified Mail.*** The plaintiff may serve the defendant by registered or certified mail, with a "return receipt requested." The plaintiff must file the return receipt with the court within 30 days of the complaint filing date to establish that the defendant was served. The return receipt can be the card returned to the plaintiff by the postal or delivery service or the return receipt printed from the postal or delivery service's website.

**(2) Constable, Sheriff, or Private Process Server.** The plaintiff may arrange for personal service on the defendant by a constable, sheriff, or private process server. If personal service is used, an affidavit of service must be filed with the court within 30 days of the complaint filing date.

**(c) Failure to Serve Within 30 Days of the Complaint Filing Date.** If the plaintiff is unable to execute and file proof of service within 30 days of the complaint filing date, the plaintiff must file a written request for an extension for time to serve the defendant. The court may grant an extension of no more than 30 days to allow additional time for service.

**(d) Dismissal for Lack of Proof of Service.** The court may dismiss a complaint as to any defendant for whom the plaintiff has not filed proof of service within 60 days after the filing date of the complaint.

#### **Rule 9. Providing Subsequent Documents to the Other Party**

**(a) General.** A complete and exact copy of every document that is filed with the court must be provided to every other party in the lawsuit before or promptly after the document is filed, by one of the following methods:

**(1)** Hand-delivery to the other party;

**(2)** Mailing the document via first-class U.S. mail to the other party's last known address, or by using any type of professional delivery service that produces written confirmation of delivery; or

**(3)** Delivering the document electronically.

**(b) Noting the Method of Service.** On the last page of a document that is filed with the court, the party who is providing the document under section (a) of this rule must state the date and method used to provide the document to the other party. For first class mailing, the date stated must be the date that it was deposited in the mail with first class postage.

#### **Rule 10. Answer**

A defendant may file an answer within 20 days of service, but is not required to do so unless the defendant files a counterclaim or is otherwise ordered to file an answer under Rule 15(e) of these rules. The defendant must pay a fee to the court to file an answer, although the defendant may request a waiver or deferral of this fee as provided by A.R.S. § 12-302 and the Arizona Code of Judicial

Administration § 5-206. The defendant must still appear at the hearing to dispute the claim regardless of whether an answer is filed.

### **Rule 11. Counterclaim**

**(a) Definition.** A counterclaim asserts that the plaintiff owes something to the defendant.

**(b) When to File.** A defendant who files a counterclaim must also file an answer. The defendant may file a counterclaim against the plaintiff that is based on the same event described in the plaintiff's complaint or based on a different event than the one described in the plaintiff's complaint. A counterclaim must be filed within 20 days of service of the summons, complaint, and notice.

**(c) Limit on the Dollar Amount.** The amount of the counterclaim cannot exceed the jurisdictional limit of the small claims division. If the defendant files a counterclaim that exceeds the small claims division's jurisdictional limit, but the counterclaim does not exceed the justice court's jurisdictional limit, the court must transfer the plaintiff's claim and the defendant's counterclaim to the justice court's "civil division." A counterclaim that is more than \$10,000 will result in a transfer of the entire lawsuit to the superior court.

**(d) Amendments.** No amended counterclaims will be allowed.

### **Rule 12. Defendant Can File a Motion to Change Venue**

If the lawsuit is not filed in the correct justice court precinct, the defendant may file a motion at least 15 days before the hearing to change the venue of the lawsuit. The plaintiff has 10 days to file a response. If the justice of the peace grants the motion, the court will transfer the lawsuit to the proper precinct. The parties must appear at any scheduled court date until they receive notice that the court has granted the motion.

### **Rule 13. Either Party Can Transfer the Lawsuit to the Civil Division**

**(a) Transfer to Civil Division by Request.** Either party can file a request to transfer the lawsuit to the justice court's "civil division."

- (b) **Time for Filing a Request to Transfer.** A party must file the request to transfer the lawsuit to the justice court's "civil division" no later than 10 business days before the hearing date.
- (c) **Voluntary Dismissal After Transfer to Civil Division.** If a request is made to transfer the lawsuit to the justice court's "civil division," and the defendant has not filed an answer or counterclaim, a plaintiff who does not want the lawsuit to proceed in the civil division has 15 days after the defendant files the transfer request to voluntarily dismiss the lawsuit.

#### **Rule 14. Alternative Dispute Resolution (A.D.R.) Conference**

- (a) **A.D.R. Conference in Lieu of Hearing.** If a county has an A.D.R. program, the court may schedule an A.D.R. conference in lieu of a hearing when the complaint is filed. The A.D.R. conference must occur within 60 to 75 days of the complaint filing date.
- (b) **A.D.R. Conference Continuance.** The court may continue the A.D.R. conference date up to 30 days for good cause.
- (c) **Setting the Case for Hearing.** If the lawsuit is not settled at the A.D.R. conference, the court must set a hearing to occur within 30 days of the conference date. The court must notify all parties of the hearing date and the requirement to attend the hearing.

#### **Rule 15. The Hearing**

- (a) **Hearing Officer.** A party may request that a justice of the peace, rather than a hearing officer, decide the lawsuit. A party must make this request in writing at least 15 days before the hearing date.
- (b) **Rescheduling a Hearing.** As soon as possible, but at least 15 days before the hearing date, a party may file a request in writing to reschedule the hearing and deliver a copy to the other party. The request must include a good reason for rescheduling and, if possible, provide supporting documentation. The court may deny the request if a party does not provide a good reason for rescheduling, does not provide documentation for the request, or if the party has made previous requests to reschedule the hearing. The court will consider emergency requests (a request received less than 15 days before the hearing) only if the request also shows a good reason for not filing it earlier.

**(c) Failure to Appear for the Hearing.**

**(1) Both Parties Fail to Appear.** If both parties fail to appear at the hearing, the court will dismiss the complaint and any counterclaims without prejudice, meaning the claims may be refiled if all other legal requirements have been met.

**(2) Defendant Fails to Appear.** If the plaintiff appears and has properly served the defendant, but the defendant does not appear, the court will consider the plaintiff's evidence and, if substantiated by the evidence, the court may award judgment for the plaintiff. However, if the defendant is on active military duty and (1) fails to appear at the hearing, and (2) has not made an appearance in the case, the court cannot award judgment for the plaintiff at that time and must transfer the case to the justice court civil division for further proceedings.

**(3) Plaintiff Fails to Appear.** If the plaintiff fails to appear, but the defendant appears, the court may dismiss the lawsuit with or without prejudice, or it may award judgment for the defendant.

**(d) Appearing by Telephone.** For a good reason, a party may appear at a hearing by telephone if the court allows telephonic appearances. The party must file a request to appear by telephone in writing at least 15 days before the hearing date. The request must contain that party's telephone number. The party must attach to the request any documents, photographs, or other evidence the party wants to submit at the hearing. If the court approves the request, the court will provide a phone number the party must call to appear telephonically for the hearing.

**(e) Conducting the Hearing.** The justice of the peace or hearing officer will consider testimony from the parties and witnesses, will consider any documents, and will decide the claim and any counterclaim. The justice of the peace or hearing officer may ask questions, and also may permit the parties to ask questions of each other and of any witnesses. The justice of the peace or hearing officer may continue the hearing and require the defendant to file a written answer if justice so requires. Formal rules of evidence do not apply. Any non-privileged evidence tending to make a fact at issue more or less probable is admissible unless the justice of the peace or the hearing officer

determines the evidence lacks reliability or will cause unfair prejudice, cause confusion, or waste time.

- (f) **Additional Time to Prepare.** If the defendant believes the time of service did not allow adequate to prepare or properly exercise other rights under these rules, such as filing a counterclaim under Rule 11 or a transfer under Rule 13, the defendant may ask the court for a continuance. If the justice of the peace or hearing officer finds that the defendant's rights have been harmed by the amount of time to prepare or properly exercise other rights under these rules, a continuance will be granted.

#### **Rule 16. Requesting an Interpreter or Special Accommodations**

The court should be notified of requests for an interpreter or special accommodations at least 15 days before a court date.

#### **Rule 17. Judgment**

- (a) **Definition and Requirements.** A "judgment" is a final written order of the court that decides the claims in the lawsuit. A judgment must be signed by a justice of the peace or hearing officer and filed with the court.
- (b) **Rendering and Mailing a Judgment.** A justice of the peace or hearing officer may render a judgment at the end of the hearing or within 10 days after the hearing. The court must mail a copy of the judgment to all parties within five days. The judgment is final and binding on all parties.
- (c) **Correcting a Judgment.** On the court's own initiative or at either party's request, the court may correct the judgment if a name is misspelled, there is a misstatement of a fact, or there is a miscalculation of an amount.

#### **Rule 18. Vacating a Judgment**

- (a) **Reasons for Vacating a Judgment.** On either party's motion, the court may relieve a party from a judgment for the following reasons:
- (1) mistake, inadvertence, surprise, or excusable neglect;
  - (2) fraud, misrepresentation, or other misconduct of an opposing party;
  - (3) the judgment is void;

- (4) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (5) any other reason justifying relief.

**(b) Timing and Effect of the Motion.**

- (1) **Timing.** A motion under Rule 18(a) must be made within a reasonable time, and for reasons (1) and (2), no more than 6 months after the entry of the judgment or date of the proceeding, whichever is later.
- (2) **Effect on Finality.** The motion does not affect the judgment's finality or suspend its operation.

**(c) Providing the Motion to the Other Party and Time for Response.** The moving party must deliver a copy of the motion to the other party on the date of filing. The other party has 15 days to file a written response, and must deliver a copy of the response to the moving party on the date the response is filed.

**(d) Other Powers to Grant Relief.** This rule does not limit the court's power to:

- (1) entertain an independent action to relieve a party from a judgment; or
- (2) set aside a judgment for fraud on the court.

**(e) Representation.** An attorney may represent a party on a motion to vacate a judgment.

**Rule 19. Dismissing a Lawsuit**

**(a) Dismissal by the Court.** If the lawsuit is not concluded within 180 days of filing, the court must dismiss the lawsuit without prejudice absent good cause for continuing the case past 180 days.

**(b) Dismissal by the Plaintiff.** If the defendant has not filed an answer or counterclaim in the lawsuit, the plaintiff may dismiss the complaint at any time by filing a Notice of Voluntary Dismissal.

**(c) Dismissal by Agreement.** At any time before the hearing, the parties may mutually agree to dismiss the complaint and any counterclaims by filing an agreement to dismiss that is signed by all the parties who have appeared in the case.



**Rule 20. Enforcing a Judgment and Representation**

Payment of the judgment is due when the judgment is rendered. A judgment from a small claims lawsuit may be enforced in accordance with Title 12, Chapter 9 and sections 22-243 through 22-246 of the Arizona Revised Statutes. An attorney may represent a party for post-judgment proceedings.

**Rule 21. Exception for Consolidated Justice Courts**

These rules apply in their entirety to all justice courts in Arizona, except that consolidated justice courts of more than three justice court precincts operating on a blended calendaring system are not required to apply these rules if the court's county superior court presiding judge issues an order that these rules do not apply to small claims cases in that court. An exception under this rule shall be applied to these rules in their entirety, except that no exception shall be made for Rule 19.

**Rule 22. Forms**

(a) The Administrative Office of the Courts shall develop recommended forms to be used in small claims cases. Court may modify these forms to comport with local practice or use forms that are substantially similar.

(b) Small claims forms are:

- (1) Notice to Plaintiff and Defendant
- (2) Complaint;
- (3) Summons;
- (4) Proof of Service by Registered or Certified Mail;
- (5) Answer;
- (6) Counterclaim;
- (7) Motion [for a motion to change venue (Rule 12) or a motion to vacate judgment (Rule 18)];
- (8) Request [for example, a request to transfer a lawsuit to the justice court civil division, request for telephonic hearing, stipulation to dismiss lawsuit; or a request to postpone the hearing];
- (9) Objection to Hearing Officer and Request for Justice of the Peace to Hear Matter
- (10) Subpoena;
- (11) Notice of Voluntary Dismissal;
- (12) Notice of Settlement; and
- (13) Request for Hearing

# Appendix to the ARSCP

## READ THIS NOTICE CAREFULLY

### **Notice to the Plaintiff and Defendant: A small claims lawsuit has been filed in justice court**

1. The small claims process is an inexpensive, quick, and informal way to resolve civil disputes up to \$3,500.
2. Persons in a lawsuit are called “parties.” There is a “plaintiff” and a “defendant.” A “plaintiff” is someone who files a lawsuit against a “defendant.”
3. Individuals represent themselves in a small claims lawsuit. There usually are no attorneys. One spouse may represent both spouses. A full-time corporate officer or authorized employee may represent a corporation; an active general partner or an authorized full-time employee may represent a partnership; an active member or an authorized full-time employee may represent an association; and any other organization may be represented by one of its active members or authorized full-time employees.
4. **You do not have a right to an appeal from a small claims judgment.** The defendant may request a transfer of the lawsuit from the Small Claims Division to the regular Civil Division of the justice court. A transfer will allow:
  - (1) Either party to have an attorney;
  - (2) The defendant to file a counterclaim for more than \$3,500;
  - (3) Either party to file motions that are not permitted in small claims lawsuits;
  - (4) Parties to have a jury trial; and
  - (5) A party to have the right to appeal.
5. You must properly complete your court papers and file them when they are due. Blank forms for a small claims lawsuit are available on the Arizona Judicial Branch website and are available from any justice court.
6. Court staff are not allowed to give you legal advice. However, court staff can provide information regarding the jurisdiction, venue, pleadings, and procedures of the small claims division.
7. You must follow the Arizona Revised Statutes and Rules of Procedure for Small Claims Cases that apply in your lawsuit. The statutes and rules are available in many public libraries and at the courthouse. The statutes are also online at the [Arizona State Legislature](#) webpage, and the rules are online at the [Arizona Judicial Branch Court Rules](#) webpage.
8. Some filings require a filing fee. Either party can request a fee waiver or deferral from the court, but the party must still file documents on time.
9. PLAINTIFF: When you file your lawsuit, the court will provide you with a summons and a copy of this notice. You must file proof of service within 30 calendar days or your case may be dismissed. **A lawsuit against the defendant cannot proceed without proper service.** Methods of service can be found in Rule 8(b), Rules of Procedure for Small Claims Cases. If proof of service is not timely received or your case is not concluded within 180 days of filing, the court will dismiss your case unless it finds a good reason not to.
10. DEFENDANT: If you have a claim against the plaintiff that is based on the same event described in the plaintiff's complaint or based on a different event, you may file a counterclaim. A defendant who files a counterclaim must also file an answer and mail a copy of the documents to the plaintiff.
11. DEFENDANT: The filing of a written answer is optional unless you file a counterclaim or you are ordered by the court to file a written answer. A defendant who files a written answer must mail a copy to the plaintiff.
12. BOTH PARTIES: You must appear at all scheduled hearings or alternative dispute resolution conferences. Both parties must provide supporting evidence for their claims and defenses.

13. A justice of the peace or a hearing officer who has received specialized training will conduct the hearing. You should be prepared to clearly present your evidence. Although you may be permitted to appear telephonically for reasons such as no longer residing in the area, it would present a financial hardship, etc., you may be at a disadvantage since all evidence must be submitted to the court before the hearing. If you fail to appear at a hearing, the court may enter a judgment against you. To assure that you receive these notices, you must keep the court informed, in writing, of your current address and telephone number until the lawsuit is over.